

Title 25: Military and Veterans

Part 103: Administrative Rules

Part 103 Chapter 1: Public Record Request

Rule 1.1 Purpose. To ensure the privacy of individuals served by the State Veterans Affairs Board and the Veterans Nursing Homes and to comply with the laws of the State of Mississippi and federal regulations.

Source: *Miss. Code Ann.* § 43-11-16 (Rev. 2009).

Rule 1.2 Release of Patient/Resident Information. Information concerning a current or former patient/resident shall be released only:

- A. Upon written authorization of the patient/resident.
- B. For an active resident, when requested by a person with legal authority to make health care decisions, a court-appointed legal guardian or a general power of attorney.
- C. For a deceased resident, when requested by a person with legal authority to act on behalf of the decedent or the estate (e.g., executor of the estate, next of kin or other family member).
- D. To his attending medical personnel and his duly authorized nominees.
- E. Upon order of a court of competent jurisdiction.
- F. When the continued treatment of the patient/resident requires the exchange of information between the MBVA/MVNH and other treatment facilities.
- G. When in the opinion of the Director of the facility, release of information is necessary for the determination of benefits, compliance with statutory reporting requirements, or other lawful purpose.
- H. Nothing in this section shall be construed to deny access to medical records by the Attorney General, the licensing agency, or his or its agents and investigators in the discharge of their official duties under state law.

Source: *Miss. Code Ann.* § 43-11-16 (Rev. 2009).

Rule 1.3 Request for Documents. When information is requested:

- A. The appropriate facility must be in receipt of written authorization or authority for release of information prior to any search of records.
- B. Upon request for release, the facility will make every effort to comply with request within five (5) working days. If for some reason this is impractical, the facility will notify the person requesting the information of the delay and the approximate time the information will be available.
- C. Request for information must be specific as to whether all available information or what part thereof is being requested.

Source: *Miss. Code Ann.* § 43-11-16 (Rev. 2009).

Rule 1.4 Costs.

- A. Estimates as to cost will be made upon request.
- B. Fees charged will be according to the following schedule: Photocopies - \$20.00 for the first twenty pages; \$1.00 per page for the next 80 pages; \$.50 per page for all pages thereafter. Ten percent of the total charge may be added for postage and handling. \$15.00 may be recovered by the MVAB/MVNH for retrieving medical records in archives at a location off the premises where the facility/office is located.
- C. Requested information will not be released until fees are paid.

Source: *Miss. Code Ann.* § 43-11-16 (Rev. 2009).

Part 103 Chapter 2: Request for Public Information

Rule 2.1 Purpose. To ensure that public documents are disseminated according to statutory requirements.

Source: *Miss. Code Ann.* § 25-61-1, et seq. (Rev. 2009).

Rule 2.2 Definitions

- A. Public Record: A public record shall mean any book, record, paper, account, letter, map, photograph, film, card, tape, recording or reproduction thereof, and any other documentary material, regardless of physical form or characteristic, having been used, being in use or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction work, duty or function of the Board or a Veterans Nursing Home (hereinafter “VNH”), or required to be maintained by the Board or a VNH.
- B. Non-exempt Record: A non-exempt record is that part of a public record which does not fall under one of the exceptions to or exemptions from disclosure in the Public Records Act.
- C. Identifiable Record: A record is identifiable if a reasonable specific description of the record has been given, such as the date of the record, the subject matter, division of person involved, etc. which will permit location or retrieval of the record.
- D. Working Day: A working day is any day other than a weekend, state holiday, or other day on which by executive order the Board or a VNH administrative office is closed or all the administrative employees are authorized to be absent.

Source: *Miss. Code Ann.* § 25-61-1, et seq. (Rev. 2009).

Rule 2.3 Availability of Records. Access of all non-exempt record of the MVAB or a MVNH will be allowed during regular business hours (8:00 to 5:00 on working days). These records will be made available for inspection and/or copying. If any public record which is held to be exempt from disclosure, as designated below, contains material which is not exempt, the MVAB or the MVNH shall separate and make the non-exempt material available for examination and/or copying.

Source: *Miss. Code Ann.* § 25-61-1, et seq. (Rev. 2009).

Rule 2.4 Procedures for Handling Public Record Requests.

A. A request for information under the Mississippi Public Records Act shall be submitted in writing to the Mississippi Veterans Affairs Board, P.O. Box 5947, Pearl, MS 39208, or directly to the Administrator of each of the four Mississippi Veterans Nursing Homes.

B. All requests for information should be marked "Request for Public Documents," and shall identify the records, give the name, address, and telephone number of the requesting party, and must be signed by the requesting party. This requirement may be waived on a case by case basis by the Executive Director or his designee to facilitate the orderly and timely release of the information.

C. The Board of VNH shall respond to the request in writing within 14 working days from the date of request. Denials shall contain the specific reasons for the denial. Copies of all denials shall be maintained on file by the Board or VNH for not less than three years from the date the denial is made. The person making the request may appeal any denial directly to the Executive Director.

D. If the records will be disclosed, the Board or VNH will give an estimate of the total cost, if any, for the compliance with the request. If the estimate is agreeable to the requestor, the Board or VNH will produce the records requested no later than 14 working days from the date the request was received. Payments must be made by case, money order, or cashier's check prior to the requestor receiving the materials.

E. Records furnished to the Office by third parties, which are not public bodies as defined in the Public Records Act, will not be released until notice to the third parties has been given. The records shall be released in 14 days unless the third party obtains a court order protecting the records as confidential.

Source: *Miss. Code Ann.* § 25-61-1, et seq. (Rev. 2009).

Rule 2.5 Exempt Records. Any record expressly exempt from the Public Records Act or any record specifically declared to be confidential or privileged by any other Mississippi or Federal statute or constitutional provision shall not be subject to mandatory inspection and copying. Those records which are specifically exempt by Mississippi statute and which fall within the jurisdiction of the MVAB/MVNH include the following:

A. Personnel records and applications for employment, except those which may be released to the person who made the application or with the prior written consent of the person who made the application. Employee consent to release information shall be recorded in writing. This shall not be construed to prohibit the disclosure of the following information about employees: name, address, date of employment, length of employment, qualifications, and salary;

B. Test questions and answers which are to be used in employment examinations;

C. Letters of recommendation respecting any application for employment;

D. Records which represent and constitute the work product of any attorney and which are related to litigation initiated by or against the MVAB/MVNH or in anticipation of prospective litigation, including all communications between such attorney made in the

course of an attorney/client relationship;

E. Appraisal information which concerns the sale or purchase of real or personal property for public purposes prior to public announcement of the purchase or sale, where the release of such records would have a detrimental effect on such sale or purchase;

F. Trade secrets and commercial or financial information obtained from outside government to the extent that disclosure would result in substantial harm to the competitive position of the person from whom or about whom the information was obtained;

(1) For the purpose of providing advance notice to submitters of trade secret or confidential commercial or financial information, twenty-five days from the submitter's receipt of written notice shall be deemed a reasonable time for the disclosure of the requested records in the absence of a court order to the contrary.

G. Investigator records compiled for law enforcement purposes, security purposes, or employment purposes, to the extent that the records could:

(1) deprive a person of a right to a fair trial or an impartial administrative adjudication;

(2) disclose the identity of a confidential source;

(3) disclose investigative techniques and procedures not generally known outside of government;

(4) endanger the life or physical safety of law enforcement or investigative personnel; or,

(5) disclose matters under criminal investigation or consideration for criminal investigation by any investigatory or prosecutorial agency.

Source: *Miss. Code Ann.* § 25-61-1, et seq. (Rev. 2009).

Rule 2.6 Fees.

A. Any person desiring copies of public records who does not officially represent a public body, as defined in the Public Records Act, shall be entitled to obtain mechanically reproduced copies at a charge of \$.25 per page. Official representatives of public bodies, as defined, shall be entitled to reasonable copies of such records with no charge.

B. If the searching, reviewing, duplicating or separating of non-exempt material from documents, etc., containing exempt material requires more than one hour of work, then any requesting party may be charged for the work time above an hour in addition to a mechanical reproduction charge of \$.25 per page. The charge of the hours shall be based upon the hourly salary of the lowest paid employee of the MVAB/MVNH qualified to do the job.

C. Mailing costs calculated at the applicable United States Postal Services rates shall be charged where appropriate. The cost of mailing a notice to third parties via certified mail, return receipt requested, shall be charged to persons requesting the public records.

Source: *Miss. Code Ann.* § 25-61-1, et seq. (Rev. 2009).

Part 103 Chapter 3: Declaratory Opinions

Rule 3.1 Application of Chapter. This chapter sets forth the State Veterans Affairs Board rules governing the form, content, and filing of requests for declaratory opinions, the procedural rights of persons in relation to the written requests, and the Board's procedures regarding the disposition of requests as required by Mississippi Code § 25-43-2.103.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.2 Scope of Declaratory Opinions. The State Veterans Affairs Board will issue declaratory opinions regarding the applicability to specified facts of:

- A. a statute administered or enforceable by the Board,
- B. a rule promulgated by the Board, or
- C. an order issued by the Board.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.3 Scope of Declaratory Opinion Request. A request must be limited to a single transaction or occurrence.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.4 How to Submit Requests. When a person with substantial interest, as required by Section 25-43-2.103 of the Administrative Procedures Act, requests a declaratory opinion, the requestor must submit a printed, typewritten, or legibly handwritten request.

- A. Each request must be submitted on 8-1/2" x 11" white paper.
- B. The request may be in the form of a letter addressed to the [Agency] or in the form of a pleading as if filed with a court.
- C. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
- D. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.
- E. Each request must clearly state that it is a request for a declaratory opinion.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.5 Signature Attestation. Any party who signs the request shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative, or judicial tribunal.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.6 Request Content Requirement. Each request must contain the following:

- A. A clear identification of the statute, rule, or order at issue;
- B. The question for the declaratory opinion;
- C. A clear and concise statement of all facts relevant to the question presented;
- D. The identity of all other known persons involved in or impacted by the facts giving rise to the request including their relationship to the facts, and their name, mailing address, and telephone number; and
- E. A statement sufficient to show that the requestor has a substantial interest in the subject matter of the request.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.7 Reasons for Refusal of Declaratory Opinion Request. The State Veterans Affairs Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- A. The matter is outside the primary jurisdiction of the Board;
- B. Lack of clarity concerning the question presented;
- C. There is pending or anticipated litigation, administrative action or anticipated administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
- D. The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- E. The facts presented in the request are not sufficient to answer the question presented;
- F. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- G. The request seeks to resolve issues which have become moot or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute, or order on which a declaratory opinion is sought;
- H. No controversy exists or is certain to arise which raises a question concerning the application of the statute, rule, or order;
- I. The question presented by the request concerns the legal validity of a statute, rule, or order;
- J. The request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;
- K. No clear answer is determinable;
- L. The question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
- M. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- N. The question is currently the subject of an Attorney General's opinion request;
- O. The question has been answered by an Attorney General's opinion;
- P. One or more requestors have standing to seek an Attorney General's opinion

on the proffered question;

Q. A similar request is pending before this agency, or any other agency, or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law; or

R. The question involves eligibility for a license, permit, certificate or other approval by the [Agency] or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.8 Agency Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the State Veterans Affairs Board shall, in writing:

A. Issue an opinion declaring the applicability of the statute, rule, or order to the specified circumstances;

B. Agree to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request; or

C. Decline to issue a declaratory opinion, stating the reasons for its action.

The forty-five (45) day period shall begin on the first business day after which the request is received by the Board.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.9 Availability of Declaratory Opinions and Requests for Opinions. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name, subject, and date of issue. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Part 103 Chapter 4 Rulemaking Oral Proceedings

Rule 4.1 Purpose. This chapter consists of rules for oral proceedings held to provide the public an opportunity to comment on submissions made under the Administrative Procedures Act and the Rules in this Title.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 4.2 Application of Chapter. This chapter applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations or written input on proposed new rules, amendments to rules, and proposed repeal of existing rules before the State Veterans Affairs Board pursuant to the Administrative Procedures Act.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 4.3 Request for Oral Proceeding. When a political subdivision, an agency, or a citizen requests an oral proceeding in regards to a proposed rule adoption, the requestor must submit a printed, typewritten, or legibly handwritten request.

- A. Each request must be submitted on 8-1/2" x 11" white paper.
- B. The request may be in the form of a letter addressed to the State Veterans Affairs Board or in the form of a pleading as if filed with a court.
- C. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
- D. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 4.4 Notice of Oral Proceeding. Notice of the date, time, and place of all oral proceedings shall be filed with the Secretary of State's Office for publication in the Administrative Bulletin. The agency providing the notice shall provide notice of oral proceedings to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of the notice with the Secretary of State. The Agency Head, or designee who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 4.5 Public Participation Guidelines. Public participation shall be permitted at oral proceedings in accordance with the following:

- A. At an oral proceeding on a proposed rule, persons may make statements and present documentary and physical submissions concerning the proposed rule.
- B. Persons wishing to make oral presentations at such a proceeding shall notify the State Veterans Affairs Board at least three business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not contacted the State Veterans Affairs Board prior to the proceeding.
- C. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- D. The presiding officer may place time limitations on individual presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- E. Persons making presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, be submitted at the

oral proceeding.

F. Where time permits and to facilitate the exchange of information, the presiding officer may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding. No participant shall be required to answer any question.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 4.6 Submissions and Records. Physical and Documentary Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the [Agency], part of the rulemaking record, and are subject to the State Veterans Affairs Board's public records request procedure. The State Veterans Affairs Board may record oral proceedings by stenographic or electronic means.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).